IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

THURSDAY, THE 18TH OCTOBER 2007 / 26TH ASWINA 1929

CRP.No. 453 of 2005(G)

AGAINST THE ORDER DATED 31/03/2005 IN SM.2/2002 of TALUK LAND BOARD, OTTAPALAM

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REVN. PETITIONERS:

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1. C.T.KRISHNAN NAMBOODIRI,
   S/O.LATE C.T.GODAN NAMBOODIRI,
   CHERAVOOR THENTHATH MANA, KOODALLUR,
   ANAKKARA, PALAKKAD DISTRICT.

2. GODAN NAMBOODIRI (JUNIOR),
   S/O.LATE C.T.GODAN NAMBOODIRI,
   DO. DO.

BY ADV. SRI.T.SETHUMADHAVAN
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR

RESPONDENTS:

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1. THE TALUK LAND BOARD,
   OTTAPPALAM, REPRESENTED BY ITS CHAIRMAN.

2. THE TAHASILDAR, OTTAPPALAM.

3. THE VILLAGE OFFICER,
   ANAKKARA, PALAKKAD DISTRICT.

4. STATE OF KERALA, REPRESENTED BY
   THE CHIEF SECRETARY, SECRETARIAT,
   THIRUVANANTHAPURAM.

BY ADV. SHRI.PUZHAKKARA MUHAMMED, GOVERNMENT PLEADER

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 18/10/2007, THE COURT ON 18/10/2007 PASSED THE FOLLOWING:

C.R.P.NO. 453/2005

ORDER ON I.A.NO. 1279/05 IN C.R.P. NO. 453/05.

DISMISSED.

18/10/2007 SD/- (P.R.RAMAN, JUDGE)

// TRUE COPY //

PA TO JUDGE.

jg

P.R.RAMAN, J.

C.R.P. No. 453 of 2005

Dated, this the 18th day of October, 2007

O R D E R

This C.R.P. is filed challenging the order of the Taluk Land Board, Ottappalam, in S.M. 2/2002 dated 31/03/2005. The fact of the case is that the property held and possessed by Shri.Godan Namboodiri (who was the declarant in the ceiling case) as on 01/01/70 was determined and ultimately an extent of 2.10 standard acres was held to be the land in excess of the allowable limit under section 85 of the Land Reforms Act and directed him to surrender the said extent. It was after reckoning the husband and wife as the members of the statutory family, the extent was determined with reference to the provisions of the Act. Actually, the properties were held in the name of Shri.Godan Namboodiri alone and his wife Smt. Sreedevi Andarjanam was not shown to have any right in the property. But the ceiling provisions allow a person to hold land the extent of which will depend upon the number of persons in the family. Therefore, merely because several such members contributing the family are taken into account does not mean that they have any right as such in the

land. Thereafter, Shri.Godan Namboodiri surrendered the excess land. Later, the Taluk Land Board sought to reopen the case under Section 85 (9A) of the Land Reforms Act, which was later dropped by the Taluk Land Board themselves. Thereafter, they proceeded to issue notice under Section 136 A of the Kerala Land Reforms Act, that was challenged before this Court in CRP No. 762/93. The said CRP was allowed in favour of the declarant, holding that the Taluk Land Board cannot invoke Section 136A. Thereafter, by the present proceedings initiated under Section 87, the Taluk Land Board refixed the extent of the land to be held by the statutory family and directed, an extent of 6.25.666 acres as excess land liable to be surrendered by the declarant. It may be noticed that while the proceedings under Section 87 were pending Shri.Godan Namboodiri died and notices were issued to the legal representatives and they were impleaded as supplemental petitioners in the revision.

2. The question that are arising for consideration is as to whether the death of Smt.Sreedevi Antherjanam in 1980 has anything to do with the ceiling case of the declarant, which was decided on 07/06/1974, long prior to her death. The view taken by the Land Board in the present proceedings is that because of the

death of Sreedevi Antherjanam, the entire right is devolved on the original declarant, and an extent of six acres has to be reduced from the ceiling limit of the statutory family. This is illegal. The question as to whether a person is holding excess land is to be decided on the crucial date as on 01/01/1970. Therefore, what is the extent of the land which could be held by a particular family is to be decided as on 01/01/1970. There may be a case of reduction in the number of members of the family later, that also nothing to do with the ceiling limit of the land to be possessed by a statutory family. It is only on a legal fiction that a statutory family is defined for the purpose of allowing a particular extent to be held by them. It is not a case of subsequent acquisition. Only in the case of subsequent acquisition, as a result of which, the declarant holds in excess of the ceiling limit, the proceedings will be warranted under Section 87 of the Kerala Land Reforms Act. This is not such a situation. In this connection, I may refer to a division bench decision of this Court in **Kurian Vs. Taluk Land Board**, reported in 1991 (1) KLT 162, wherein it was held that the ceiling area prescribed in Section 82 in respect of a family cannot increase or decrease subsequently, merely on account of increase or decrease

in the number of the members of the family either by birth or death or by minor members attaining majority. In the result, the proceedings culminated in the order impugned in this revision is set aside.

This C.R.P. is allowed.

(P.R.RAMAN, JUDGE.)

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